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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,557	03/29/2004	Julie Vogelsang-Switzer	A894698US	8292

37047 7590 06/28/2007  
GOWLING LAFLEUR HENDERSON LLP  
SUITE 1400, 700 2ND ST. SW  
CALGARY, AB T2P 4V5  
CANADA

EXAMINER
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MEHTA, PARIKHA SOLANKI

ART UNIT	PAPER NUMBER
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3737

MAIL DATE	DELIVERY MODE
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06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/810,557

Applicant(s)

VOGELSANG-SWITZER, JULIE

Examiner

Parikha S. Mehta

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 1904 and 09 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/9/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 5 September 2005 was filed after the mailing date of the application for patent on 29 March 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Drawings***

2. The drawings are objected to because they are informal. Examiner recommends that Applicant replace handwritten portions with formal, typed drawings in order to overcome this objection. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 8 is objected to because of the following informalities: the phrase "said radius of curvature of each of said downwardly curved portions" lacks antecedent basis. Examiner suggests that Applicant amend the claim to instead recite "a first radius of curvature" in place of "a radius of curvature" in line 1, and further amend the claim to recite "a second radius of curvature" in place of "said radius of curvature" in line 3 of claim 8. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Laubsch (US Patent No. 3,153,412), previously disclosed by Applicant, hereinafter Laubsch ('412). Laubsch ('412) discloses a device comprising a pair of spaced-apart, downwardly curved members adapted to be positioned over a respective upper thigh portion of a patient's legs, a substantially flat portion extending intermediate the pair of curved members wherein the flat portion is adapted to raise and support a pair of male testes (Figs. 1 & 2). Laubsch ('412) shows that the radius of curvature of each of the downwardly curved portions proximate the inner parallel side edges is greater than the radius of curvature of each of the downwardly curved portions proximate the outer side edges (Fig. 3).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Laubsch ('412).

Applicant admits that motivation and methods for supporting the testes during ultrasound examination are well known in the art (Specification, p. 2-3). In the same problem solving area, Laubsch ('412) teaches a method of supporting the testes as previously discussed for claims 8-10. Laubsch ('412) further teaches that use of such a device increases patient comfort and is capable of being securely positioned (col. 1 lines 26-32). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the commonly known methods of testicular ultrasound by using the device of

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Laubsch ('412) instead of prior art support devices in order to enhance support stability and patient comfort, in view of the teachings of Laubsch ('412).

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cazenave et al (Scrotal cup for testicular ultrasound. *Journal of Clinical Ultrasound*. 15(5): pp. 357-359. 1987.) teach a related method of supporting the testes with a plastic cup to alleviate patient discomfort during ultrasound examination.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parikha S. Mehta whose telephone number is 571.272.3248. The examiner can normally be reached on M-F, 8 - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571.272.4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Parikha S. Mehta

Examiner – Art Unit 3737



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